

EXHIBIT 26

AMERICAN ARBITRATION ASSOCIATION
NEW YORK, NEW YORK - COMMERCIAL RULES

- - - - -x
BENJAMIN J. JESSELSON,
Individually and as Trustee, on behalf of
a 1983 JESSELSON FAMILY TRUST,
Claimants,

v. Arbitration No.
13 148 Y 01912 10

J. EZRA MERKIN,
Respondent.

- - - - -x
JJS ASSOCIATES, L.P.,
Claimant,

v. Arbitration No.
13 148 Y 012802 10

J. EZRA MERKIN,
Respondent.

- - - - -x
Arent Fox LLP
1675 Broadway
New York, New York 10019
September 16, 2011
8:37 a.m.

B E F O R E:

BEATRICE K. LEBER, ESQ. - The Chairwoman

THOMAS J. FLEMING, ESQ. - Panel Member

STEPHEN W. GREINER, ESQ. - Panel Member

Amy Klein Campion - Hearing Reporter

1 J. Balsam - Cross/Bamberger
2 that it was getting confirmations and
3 account statements?

4 A. That's my understanding.

5 Q. And you say here: "We can't
6 imagine a hypothetical manager who has had
7 stupendous risk-adjusted returns for many
8 years."

9 That would certainly be a proper
10 and accurate characterization of
11 Mr. Madoff as of April 2004, correct?

12 A. I would not have thought of it
13 that way.

14 Q. Do you agree that Mr. Madoff had
15 a proprietary black box approach?

16 A. I'm not sure I agree with that
17 either, because he did disclose what
18 trades he was purportedly making.

19 Q. But not the signals, right? Not
20 when he placed the trades?

21 A. Well, he certainly didn't tell
22 people in advance.

23 Q. "No one outside of his firm
24 really understands how results are
25 achieved." That's also an accurate

1 F. Hohmann - Redirect/Bamberger
2 but he was not -- it wasn't a minus 1 to a
3 plus 2 because there were almost no
4 minuses. The minuses that occurred were
5 quite de minimis.

6 Q. So Mr. Merkin was actually
7 overstating the amount of risk that the
8 portfolio was assuming in his comments?

9 MR. MENNITT: Objection to the
10 leading, but...

11 A. I believe so.

12 MR. BAMBERGER: I have nothing
13 else for you.

14 MR. MENNITT: No further
15 questions.

16 THE CHAIRWOMAN: Any questions?

17 MR. GREINER: No.

18 MR. FLEMING: No.

19 (Witness excused.)

20 THE CHAIRWOMAN: So we are now
21 at five of 4. We should probably
22 break here today. We can go off the
23 record.

24 (Discussion off the record.)

25 (Time noted: 3:56 p.m.)